S.B.CIVIL MISC. APPEAL NO.705/2006
(United India Insurance Co. Ltd. Vs. Lal Chand & ors.)

Date of order : 04.10.2006

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr.B.D.Purohit for the appellant

By way of this appeal insurer of the vehicle involved in accident seeks to question the common award dated 22.01.2001 made by the Motor Accidents Claims Tribunal, Rajsamand insofar it relates to Claim Case No.327/1998 whereby the Tribunal has awarded compensation in the sum of Rs.2,00,000/- in favour of the claimant-respondents for accidental death of Kailash Chandra, about 24 years in age, earning about Rs.2,700/- per month.

The accident in question occurred on 29.10.2003 when the deceased Kailash Chandra riding a scooter with another victim Radhey Shyam sustained injuries on the scooter being hit by a truck bearing registration No.RJ 27 G 0075; and he succumbed to injuries. In Claim Case No.327/1998 the parents, brother and sisters of the deceased Kailash Chandra and in other Claim Case No.328/1998 the dependents of deceased Radhey Shyam claimed compensation arraying

driver, owner and insurer of the offending truck as non-applicants. The insurer contested the claim applications with the submissions that the accident occurred for negligence of scooter driver and pleaded various grounds for its exoneration including want of valid driving licence with the truck driver. After framing of necessary issues in consolidated trial of the two claim cases, the claimants adduced evidence, oral and documentary. However, no evidence was adduced on behalf of the non-applicants. It appears that the proceedings against driver were dropped on 11.10.2000.

The Tribunal after consideration of the entire evidence available on record came to the conclusion that the accident was caused by rash and negligent driving of the aforesaid truck and scooter riders died due to the injuries sustained in such accident. It was also found that the driver was driving the truck in the employment and directions of the truck owner. So far the issue relating to exoneration of the insurer was concerned, the Tribunal noticed that the insurer has not led any evidence and, therefore, decided the said issue against the insurer.

Taking up quantification of compensation in the present Claim Case No.327/1998, the Tribunal considered it proper to

accept monthly earning of the deceased at Rs.2,700/- while working in a marble factory and did not accept the case of the claimants about his earning at Rs.3,500/- per month. The Tribunal considered the family set up and took the loss of contribution for his parents at Rs.1,500/- per month and after application of a multiplier of 10 assessed pecuniary loss at Rs.1,80,000/-. The Tribunal allowed Rs.10,000/- towards treatment of Kailash Chandra before his demise and Rs.10,000/- on funeral expenses and transportation etc. The Tribunal allowed interest at the rate of 12% per annum from the date of filing of claim application and also directed that if payment would be made beyond the said period of two months, interest shall be payable at 15% per annum.

The insurer seeks to question the award aforesaid in this appeal with the submissions that the accident was caused solely due to fault of the scooter driver Radhey Shyam; that the truck driver was not holding valid documents concerning registration, fitness, permit etc. and that amounts to violation of policy conditions; that the insurer was immediately not informed about the accident; that driver was not holding valid driving licence and proceedings against him were dropped and he was not produced in witness box nor his original driving licence was got exhibited, therefore, the insurer is required to

be exonerated. The insurer also contends that the proceedings in the claim application remained pending from the year 1994 to 22.01.2001 for the fault of the claimants and, therefore, interest at the rate of 12% per annum ought not to have been allowed from the date of filing of claim application. Stipulation in the impugned award of imposition of interest at the higher rate of 15% per annum in case of failure to make payment within two months has also been assailed being contrary to law. However, learned counsel appearing for the insurer-appellant has candidly admitted that another appeal arising out of the same award in relation to other Claim Case No.328/1998 has already been dismissed by this Court on 13.09.2006.

This Court is clearly of opinion that present appeal also remains bereft of substance and deserves to be dismissed. So far the question regarding responsibility towards accident is concerned, it is apparent on the face of record that the non-applicants have not led any evidence at all and the Tribunal has noticed from the statements of eye-witnesses and so also documentary evidence that the accident was caused by exclusive fault of the truck driver and such finding does not warrant any interference. Other submissions sought to be made by the insurer for exoneration also remain fundamentally

baseless when the insurer has not led any evidence at all. It was required of the insurer to have at least adduced primary evidence to establish violation, if any, of policy conditions by the insured and in absence thereof, the Tribunal cannot be said to have erred in mulcting liability upon the insurer when the factum of insurance is not in dispute. The submission of the insurer about non-production of the driver in evidence operates rather against the appellant itself. So far dropping of the proceedings against the driver are concerned in a motor vehicle accident case where basis of liability is use of a motor vehicle even if proceedings against driver have been dropped but have been continued against the owner and the insurer of the vehicle, neither the claim application was rendered incompetent nor the insurer appears justified in raising such objection in appeal.

So far the rate and period of interest are concerned, in view of too restrictive award made by the Tribunal, there does not appear any reason to interfere with the same. The deceased was of course an unmarried person but the age of his father and mother has been shown at 45 and 40 years respectively. The Tribunal has rightly taken loss of contribution at Rs.1,500/- per month but then has obviously erred in applying the multiplier of 10 only. Moreover, the

Tribunal has chosen not to allow any amount towards non-pecuniary loss at all. Submissions for disallowing interest pendente lite on such restrictive award cannot be countenanced. Even otherwise, there is nothing on record to show that the claimants intentionally and deliberately delayed disposal of the claim case. Further, in view of the amount of award allowed by the Tribunal being falling on much lower side, even if stipulation regarding penal rate of interest is not countenanced as such, in the circumstances of this case, such award does not appear requiring any interference. Viewed from any angle, the appeal remains totally bereft of substance and does not merit admission.

The appeal fails and is, therefore, dismissed.

(DINESH MAHESHWARI),J.

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